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TRIAL

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 521 (PKC)

5 PETER BRIGHT,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.  
9 February 19, 2020  
10:39 a.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge  
13 -and a Jury-

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 BY: ALEXANDER LI

17 TIMOTHY TURNER HOWARD

Assistant United States Attorneys

18 DAVID E. PATTON

19 Federal Defenders of New York, Inc.  
Attorney for Defendant

20 BY: AMY GALLICCHIO

ZAWADI S. BAHARANYI

21 Assistant Federal Defenders

22 Also Present:

Elizabeth Jensen, FBI

23 Ariella Fetman, Government Paralegal

Alondra Rayes, Defense Paralegal

24 Jason Fisher, Technical Support

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1 (At sidebar)

2 THE COURT: So we need a defendant and we need a  
3 prosecutor. And I saw Mr. Li out there.

4 MS. GALLICCHIO: Do you want me to go get him?

5 THE COURT: If you don't mind, please.

6 I'm assembled at the sidebar with the government,  
7 defense counsel, and the defendant.

8 I received a note at 10:11 a.m. which has been marked  
9 as Court Exhibit 16. "Can I please see someone re question for  
10 medical reasons. Thank you, Juror No. 8."

11 The note spoke potentially of an emergency, but I  
12 could not discern it from the face of the note, but I know as a  
13 person of general experience that if it's a heart attack or a  
14 stroke you don't wait, you don't -- it needs to be tended to.  
15 So I asked the deputy marshal to inquire what does she want.  
16 He first said he thought she wanted to make a phonecall. Then  
17 he said her blood -- she thinks her blood pressure is high but  
18 she doesn't need to do anything right now. And so she's not  
19 asking to do anything.

20 I have called the nurse on duty and I'm going to ask  
21 the nurse to talk to her, examine her. She'll have blood  
22 pressure equipment. And, of course, the jury, per my  
23 instructions, will cease deliberating during that period of  
24 time. And if the nurse medically clears her, she goes back in  
25 the jury room and deliberates. If she says to the nurse I'm

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1 OK, I don't need my blood pressure taken or anything, then the  
2 nurse will leave and that will be the end of that.

3 So that's what I'm dealing with and, of course, if the  
4 nurse says something like: Oh, my goodness, you need to be in  
5 the hospital right away, we'll deal with that when, as and if  
6 that happens.

7 Any objection from the government?

8 MR. LI: No objection.

9 THE COURT: From the defendant?

10 MS. GALLICCHIO: No, your Honor. None.

11 THE COURT: Thank you all very much.

12 (Recess pending verdict)

13 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Please be seated.

3 So marked as Court Exhibit 17 is a note from the jury  
4 which reads:

5 "Please make 11 copies of the printed typed note from  
6 judge. Please provide more envelopes. Robert Sullivan."

7 He dates it. I guess, that's 12:19 he dated correctly  
8 at 12:55 p.m. He sent out the Court's note of 2:48 p.m. on  
9 whatever day it was that dealt with the issue of "attempt".

10 So, I am going to give them back the one they gave me  
11 with -- how many do we have 12 -- 12 copies. We're giving them  
12 one extra and a bunch of envelopes.

13 Any objection from the government?

14 MR. LI: No objection, your Honor.

15 THE COURT: From the defendant?

16 MS. GALLICCHIO: No, your Honor.

17 THE COURT: All right. We are adjourned. Thank you.

18 (Deliberations)

19 THE COURT: All right. Please be seated.

20 I have a note from the jury which has been marked as  
21 Court Exhibit 18. It says:

22 "Unable to reach a consensus after reexamining  
23 evidence individually and as a group."

24 Signed by Juror No. 1 at 2:10 p.m.

25 Any objection to my declaring a mistrial?

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1 MR. LI: No objection, your Honor.

2 MS. GALLICCHIO: No objection.

3 THE COURT: All right. We'll bring our jurors in.

4 (Jury present)

5 THE COURT: Please be seated.

6 Ladies and gentlemen, I received a note from your  
7 foreperson which reads:

8 "Unable to reach a consensus after reexamining  
9 evidence individually and as a group."

10 So, accordingly, I am declaring a mistrial in this  
11 case and there will be -- we will start anew with jury  
12 selection and the presentation of evidence before a new jury.

13 You've worked very hard. You've tried your best. You  
14 did everything you could. You didn't do this to please me or  
15 to please the parties. You did this because this is a  
16 responsibility of citizenship. This is the highest means for a  
17 citizen to participate in government. The inability of a jury  
18 to reach a verdict is part of the system, part of the American  
19 system which we provide for.

20 Look, you got this case around 11 o'clock on Friday.  
21 You worked all day. You came back on Tuesday after a holiday  
22 weekend, worked, you know when I gave you certain instructions  
23 you stayed till six o'clock at night. You came back today.  
24 You never complained. You were an ideal jury in that regard.  
25 And I want you to leave here proud of yourselves. Why?

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1 Because you did your honest best. That's why you followed the  
2 instructions. You followed the evidence and the law and you  
3 wound up where you are and that is important. So, I stand in  
4 great respect, indeed, you of your service.

5 A couple of things I will ask of you, something of a  
6 personal nature. And that is that if we should ever meet again  
7 on the street, in a subway car, where ever it may be, that I  
8 hope you'll remind me of where we first met.

9 And secondly, with the barbecue season shortly upon  
10 us, first Easter and Passover and then barbecue season, it's  
11 going to come to pass that you will see family members, friends  
12 and neighbors and it may happen that somebody will tell you how  
13 they plan to evade jury service. I don't want you to be mean  
14 to anybody but I want you to let them know what a profound  
15 experience this has been for you, one that you will remember  
16 for the rest of your lives I suspect and that evading jury  
17 service is like somebody confessing to you that they cheated on  
18 their taxes or shoplifted an expensive item from the store.  
19 It's not something you find one bit funny and I hope you'll  
20 remember me when that happens.

21 Now, as I told you at the beginning, when your jury  
22 service is over, and it is, you are free to discuss the case  
23 with whomever you choose. I am not going tell you what you  
24 should do or what you shouldn't do. Some jurors find that  
25 they're perfectly happy to talk about what they saw in the

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1 courtroom, what they observed and even what they thought about  
2 it. Some jurors choose not to discuss what fellow jurors said  
3 to each other inside the jury room. That's not an order to you  
4 that you can't do that. You may do that. But some jurors  
5 decide that that's something they're going to keep to  
6 themselves and it's not anybody else's business but you'll make  
7 your own decision as to what you want to do.

8 So, with great admiration for your service, the  
9 attorneys, the defendant, the case agent will now all stand  
10 with me as you exit this courtroom one last time.

11 (Jury dismissed)

12 THE COURT: Please be seated.

13 Are there any special limitations or requests on my  
14 setting a new trial date from the standpoint of the government?

15 MR. LI: No, your Honor.

16 THE COURT: From the standpoint of the defendant?

17 MS. GALLICCHIO: No, your Honor. We just have to just  
18 coordinate with our witness who comes in from Canada but --

19 THE COURT: Right. Well, I have other things I need  
20 to check including other criminal cases on my calendar but  
21 would, for example, March 30th work for the parties?

22 MS. GALLICCHIO: I'll be out of the country, your  
23 Honor.

24 THE COURT: All right. Then I'll have you back and  
25 we'll talk about a trial date when I see how certain other

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1 trials fall on my schedule.

2 Let me ask you this. Would it be convenient to try  
3 the case starting Monday, April 20th?

4 From the government?

5 MR. LI: That's fine, your Honor.

6 THE COURT: From the defendant?

7 MS. GALLICCHIO: I think Ms. Baharanyi may have a  
8 conflict.

9 MS. BAHARANYI: Your Honor, I have a suppression  
10 hearing starting that Thursday. I'm just not sure of the  
11 timing.

12 THE COURT: Well, if this is a replay you'll be able  
13 to get to your suppression hearing. Who is the suppression  
14 hearing before?

15 MS. BAHARANYI: It'll be before Judge Furman -- excuse  
16 me -- Judge Koeltl.

17 THE COURT: All right. Well, maybe it will come to  
18 pass that if there is anything going on that your presence will  
19 not be required for that portion of the trial. Although, I  
20 would anticipate that there would be no trial on by Thursday if  
21 history is a guide.

22 All right. So it's set for Monday April 20 at ten  
23 a.m.

24 MS. BAHARANYI: I'm sorry, your Honor. I apologize.  
25 Our expert is, that's actually one of the dates he's blocked



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1 out.

2 THE COURT: Well, he can come in on the 21st.

3 MS. BAHARANYI: He is out from the 20th through the  
4 24th.

5 THE COURT: All right. Well, we don't have a la cart  
6 scheduling here. Maybe you can talk to your expert and see  
7 whether he can arrange his schedule or you can get a videotape  
8 examination of him. All right?

9 MS. BAHARANYI: Your Honor, I will say this. He does  
10 have lots of availability --

11 THE COURT: I am sure he does and I'm sure you do too,  
12 but I have a schedule of trials and this works with, I offer  
13 you a date and you tell me what the good reason is.

14 Where is the expert that week and how long is he gone  
15 for?

16 MS. BAHARANYI: He gave us the dates of April 20th  
17 through the 24th that he is not available. I'll pull up his  
18 e-mail, your Honor.

19 (Pause)

20 MS. BAHARANYI: He said April 20th through the 24th is  
21 a blackout date which might be related to his practice.

22 THE COURT: All right. I'll start it on April 27th at  
23 ten a.m.

24 Can't do it then either, right?

25 MS. BAHARANYI: The issue is -- that's right. So the

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1 29th, the 30th, the 31st, I'm out, and I have a sentencing on  
2 the 27th.

3 THE COURT: OK. So, what are you proposing? This is,  
4 quite frankly, ridiculous. I assume any busy lawyer has a busy  
5 calendar. I haven't met one that doesn't have dates on their  
6 calendar.

7 MS. GALLICCHIO: Your Honor, I don't understand why  
8 the Court is getting so angry with us.

9 THE COURT: I'm not angry. I am just concerned that  
10 there's gamesmanship here.

11 MS. GALLICCHIO: How is this gamesmanship, your Honor?

12 THE COURT: I proposed three dates and all of them you  
13 tell me you are not available on.

14 MS. GALLICCHIO: We were available the 20th. Our  
15 witness is not available.

16 THE COURT: Well, why don't you do this. Why don't  
17 you give me through the balance of the year the dates you're  
18 not available and your witness is not available.

19 MS. BAHARANYI: OK.

20 MS. GALLICCHIO: Very well.

21 MS. BAHARANYI: We can write it, your Honor, and we'll  
22 provide it to the Court.

23 MS. GALLICCHIO: How would you like to us provide it  
24 to the Court in writing or?

25 THE COURT: However you would like to provide it.

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1 (Pause)

2 MS. GALLICCHIO: Your Honor, what we'll do, if we  
3 could be excused for a moment, we will call Dr. Cantor and see  
4 if there is any way he can accommodate us for week of the 20th.

5 THE COURT: That will be great. Thank you.

6 (Pause)

7 MS. BAHARANYI: Your Honor, if you may?

8 THE COURT: Yes.

9 MS. BAHARANYI: Could we send the Court a letter by  
10 tomorrow morning and that way it gives us a chance to talk with  
11 the government as well about dates and that might simplify this  
12 process? We don't want to waste the Court's time.

13 THE COURT: All right. Are you available on  
14 March 23rd?

15 MS. GALLICCHIO: Yes, your Honor. I leave the 27th  
16 for -- I leave the country. It's a vacation.

17 THE COURT: All right. Well, will that leave enough  
18 time?

19 MS. GALLICCHIO: Apparently, that week is bad for Dr.  
20 Cantor, as well.

21 MS. BAHARANYI: If we could talk with him and have a  
22 more thorough conversation with him about the dates and send a  
23 letter first thing in the morning.

24 THE COURT: All right. I just want the record to  
25 reflect and I know that counsel has expressed surprise or

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1 disappointment over the judge's reaction. I've offered now the  
2 week of March 23, March 30, April 20, April 27. I should put  
3 on the record that I have scheduled on March 30, United States  
4 against Jane, 19 CR 59. I have scheduled on April 6, 19 CR  
5 395. I have on dates when I'm not on trial full calendars of  
6 conferences and I have been willing to accommodate counsel with  
7 regard to schedule. So, I would say any disappointment or  
8 displeasure on my part is not unreasonable because I am trying  
9 to give your client an early trial which I assume he wants.

10 MS. GALLICCHIO: Of course, as are we, your Honor. I  
11 just don't want the Court to -- The Court has accused us of  
12 gamesmanship and that's not what we're engaging in. There are  
13 a lot of people's schedules that we're trying to coordinate.  
14 We have a witness that, unfortunately, he has a practice and a  
15 busy schedule.

16 THE COURT: Fine. Well, I practiced for 26 years and  
17 generally speaking, I have to say most judges didn't give me an  
18 opportunity to be heard on trial dates. Most judges issued an  
19 order with the trial date in it. And then it was my problem to  
20 work backwards how to make it happen including the de bene esse  
21 deposition of a witness who would not otherwise be available.  
22 So, maybe that's a change in style of practice. Maybe that's a  
23 quirk unique to me but that's what I've experienced. So, I  
24 just think the record should reflect that I've done everything  
25 I can to give you an early trial date and so I'll hear back

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1 from you on your lack of a availability. I want to hear if  
2 there are dates you are not available and then I will set a  
3 trial date.

4 MS. BAHARANYI: Thank you, your Honor.

5 MR. LI: Your Honor, before we break, the government  
6 moves to exclude time until March 23, 2020, which is the  
7 earliest date the Court had suggested. This is for the parties  
8 to confer and determine their respective availability, as well  
9 as the availability of the Court and for pretrial.

10 MS. GALLICCHIO: No objection.

11 THE COURT: I find the ends of justice will be served  
12 by granting a continuance until April 23rd and that the need  
13 for continuance outweighs the best interests of the public and  
14 defendant in a speedy trial. The reasons for my finding is  
15 that the time is needed to enable the defense counsel to come  
16 up with a list of dates in which they are not available. And  
17 accordingly, the time between today and April -- March 23 is  
18 excluded under the Speedy Trial Act.

19 If I said "April 23" I meant "March 23".

20 All right. Anything further from the government?

21 MR. LI: No, your Honor.

22 THE COURT: From the defendant?

23 MS. GALLICCHIO: No, your Honor.

24 THE COURT: Thank you all very much.

25 (Adjourned)